



March 24, 1999

Ms. Carla Robinson  
Assistant City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR99-0821

Dear Ms. Robinson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 122988.

The City of College Station (the "city") received a request from two city council members, Messrs. Steven E. Esmond and Swiki Anderson, concerning "amount of monies paid and when paid to professional service contractors especially as it relates to individual medical professional care providers." Specifically, the council members request "copies of invoices for services provided and canceled checks for payments to reflect date, amount paid, payee, of course with patient name and medical treatment or procedure provided redacted." In response to the request, you submit to this office for review a representative sample of the information at issue.<sup>1</sup> You claim that the requested information is excepted from disclosure under Government Code sections 552.024, 552.117(1), and 552.101 in conjunction with claimed statutes. We have considered the exceptions and arguments you raise and reviewed the submitted information.

As a preface to our discussion, we note that this office has previously addressed whether records responsive to a previous request for information, by one of the requestors, were subject to an exception to required disclosure. In Open Records Letter No. 98-2869 (1998), our office concluded that the city could withhold responsive information, certain 1099-MISC forms, pursuant to section 552.101, in conjunction with section 6103(a) of title 26 of the

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

United States Code, which renders tax return information confidential. Because this office has issued a prior ruling regarding the "1099-MISC forms issued during a two year period," you may rely on that ruling to withhold the requested 1099-MISC forms. *See* Gov't Code § 552.301. As for the pending request for information, however, the requestors apparently seek a broader scope of information. Therefore, you ask this office whether the requested information must be withheld under the claimed exceptions.

We first note that the requestors are members of the city council.<sup>2</sup> In their request letter, the council members state that "[w]e seek this information as a part of our City Council legislative activities."<sup>3</sup> However, you state in your brief to this office that "[t]he City considers [the requests] to have the same status as a request from a member of the general public as the City has determined that the request was not made in [the council members'] official capacity." In fact, you also assert that "it is clear that Mr. Anderson has no intention of maintaining the confidentiality of the records he is seeking." However, we note that the legislature has prohibited governmental bodies from inquiring into the motives of a requestor in seeking information. Gov't Code § 552.222(b).

In Attorney General Opinion JM-119 (1983), this office stated that a member of the board of trustees of a community college district has an inherent right of access to district records when the trustee requests access to the records in his official capacity. Attorney General Opinion JM-119 at 3. Accordingly, the opinion concluded that when a trustee exercises his inherent right to district records and requests records in his official capacity and not as a member of the general public, the custodian of the district's records cannot deny the trustee access to the requested records on the basis of exceptions to public disclosure set forth in the Open Records Act.<sup>4</sup> In order to carry out his official duties, a member of a governmental body must have complete and unfettered access to records maintained by the governmental body. *Id.*; Attorney General Letter Opinion No. 93-69 (1993). We note, however, that the

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<sup>2</sup>Section 552.008 of the Government Code provides that a governmental body shall provide public information, including confidential information to a requesting *member of the legislature* if the requesting member states that the information is requested for legislative purposes. However, a governmental body may require a requesting member of the legislature to sign a confidentiality agreement providing for security and confidentiality of information that is otherwise confidential. Gov't Code § 552.008(b). Since the requestors in the pending request are not members of the legislature, section 552.008 is not implicated. Thus, we will address your arguments that the information is excepted from disclosure.

<sup>3</sup>In subsequent correspondence to this office, Mr. Esmond reiterates that "in making the open records request I was, and am, acting in my official capacity as an elected member of the College Station City Council."

<sup>4</sup>Furthermore, we have stated that absent express statutory authority, a majority of a governing board may not restrict an individual member's access to the records of the governmental body. *See* Attorney General Letter Opinion No. 93-69 (1993).

determination of whether a requestor is acting in an official capacity rather than as a member of the public involves the resolution of factual issues outside the scope of the open records process. *See* Open Records Decision Nos. 554 (1990), 552 (1990).

Based on the council members' representations and for purposes of this ruling, if the council members' request for information in the governmental body's possession is in fact in their official capacity, the Open Records Act does not control the government official's right of access to the information. Attorney General Opinion JM-119 (1983). In such case, a release or transfer of the requested records to the city council member will not constitute a release to the public for purposes of section 552.007.<sup>5</sup> *See* Gov't Code § 552.007; *see also* Open Records Decision No. 468 (1987) (employee of agency whose job requires or permits certain access to records has not been granted access as member of public). In the *alternative*, if the city council members' request for information is outside the scope of their official capacity, and thus considered to be a request from a member of the general public, we next consider whether the requested information is excepted from public disclosure under your claimed exceptions.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information deemed confidential by statute. You argue that section 6103(a) of title 26 of the United States Code, which renders tax return information confidential, is applicable to the marked information. *See* Open Records Decision Nos. 600 (1992), 226 (1979). Specifically, you assert that "[i]t is the City's position that portions of the invoices, medical claims, canceled checks requested by Mr. Anderson also constitute tax return information and as such are confidential pursuant to § 6103." We disagree with your broad interpretation of "return information" under section 6103. First, the marked information for which you raise section 6103 does not consist of 1099-MISC forms which were at issue in our prior ruling, Open Records Letter No. 98-2869. Further, we note that a contract relating to the expenditure of public funds generally is the type of information that is public. Gov't Code § 552.022. The yellow highlighted information which you seek to withhold under section 6103 in fact consists of billing information from invoices which we believe is not excepted from required public disclosure. We, therefore, conclude that the city may not withhold the yellow highlighted information – consisting generally of the service provider identifying information – under section 6103(a) of title 26 of the United States Code.

You also contend that portions of the submitted records consist of medical information made confidential under section 552.101 of the Government Code in conjunction the

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<sup>5</sup>Information may also be transferred from one individual to another within a governmental body without losing its confidential status. Open Records Decision No. 468 (1987).

Medical Practice Act (the “MPA”), article 4495b of Vernon’s Texas Civil Statutes. The MPA protects from disclosure “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” V.T.C.S. art. 4495b, § 5.08(b). To the extent the submitted documents include medical records, we note that access to such records is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The MPA provides for both the confidentiality of medical records and certain statutory access requirements. *Id.* at 2. In this instance based on a review of the submitted documents, it appears that Exhibit B, the Health Insurance Claim forms, is subject to the confidentiality provisions of the MPA. *But see* V.T.C.S. art. 4495b, § 5.08(h) (exceptions to confidentiality).<sup>6</sup> However, Exhibits C and D do not appear to be records protected from disclosure under the MPA. Accordingly, the medical records submitted to this office for review may only be released as provided by the MPA.

Section 552.101 also excepts from disclosure information protected by common-law and constitutional privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that the following types of information are excepted from required public disclosure under privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). In this instance, the requestors have framed their request by stating that “patient name and medical treatment or procedure” may be redacted. Apparently, in compliance with their request for redacted information, the city has marked (highlighted in green) the redacted information. Although some of the green highlighted information is subject to common-law privacy, we agree that based on the fact that the requestors do not seek the “patient name and medical treatment or procedure” such information is outside the scope of the request. Therefore, our office will not specifically rule on the disclosure of this non-responsive information.

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<sup>6</sup>In pertinent part, the MPA reads as follows:

(h) Exceptions to the privilege of confidentiality, . . . , exist only to the following:

(3) qualified personnel for the purpose of management audits, financial audits, program evaluations, or research, but the personnel may not identify, directly or indirectly, a patient in any report of the research, audit, or evaluation or otherwise disclose identity in any manner;

Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires the city to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). In this instance, if the individuals whose information is at issue have “requested that this information not be made available to the public,” then such information must be withheld. You may not, however, withhold this information if the employee had not made a request for confidentiality under section 552.024 prior to the time this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Accordingly, you must redact the information subject to section 552.117 wherever it is located in the submitted records.<sup>7</sup>

We next consider the city’s representation, in its letter dated February 18, 1999, that “the information requested can better be provided in the form of the Texas Municipal League’s (‘TML’) Benefit Cost Report,” because “providing the requested information in the form of a report would avoid the tremendous cost of accumulating, reviewing, and redacting confidential information from an estimated 20,000 documents.”<sup>8</sup> *See generally* Open Records Decision Nos. 633 (1995), 563 (1990), 561 (1990) (governmental body must make good faith effort to relate request to information which it holds). We disagree with your determination for two reasons. First, if the requestors are considered to have asked for the responsive information in their official capacity, then they may review the city’s records without implicating the prohibitions of section 552.007. Second, as for a request from the general public, we note that the act does not permit a governmental body to require a requestor to accept one record as a substitute for another. In Open Records Decision No. 606, this office held that the act requires a governmental body to release a copy of an actual requested record, with any confidential or non-disclosable information excised.<sup>9</sup> Information is not removed from the scope of the act merely because a governmental body has copied it into another record, either in the same language or in a compiled, edited, summarized, improved, or otherwise altered form. *See id.* § 552.228

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<sup>7</sup>We note that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information.

<sup>8</sup>A governmental body should discuss with the requestor how the scope of a request might be narrowed if a large amount of information has been requested. Gov’t Code § 552.222(b).

<sup>9</sup>The Open Records Act implements the policy of promoting the people’s control over their governmental institutions. Gov’t Code § 552.001(a). “The people . . . do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.” *Id.*

(requiring "governmental body to provide a suitable copy of a public record"); Open Records Decision No. 606 at 2-3 (1992).<sup>10</sup>

Finally, as for your concerns over the cost of producing the requested information to the public, this office does not address cost questions arising from requests for public information under the Open Records Act. Section 552.261 of the Government Code provides that the cost of providing copies of public information "shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead." The Texas General Services Commission sets rules specifying the methods and procedures for determining such costs.<sup>11</sup> Gov't Code § 552.262. Consequently, you should contact the Texas General Services Commission if you have questions concerning the cost of providing copies of public information. We suggest that you contact the open records administrator at the General Services Commission at (512) 475-2497.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with the first name "Sam" written in a larger, more prominent script than the last name "Haddad".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 122988

Enclosures: Submitted documents

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<sup>10</sup>In effect, the act does not permit a governmental body to provide a requestor with a new document on which only the disclosable requested information has been consolidated and retyped. *Id.*

<sup>11</sup>If, however, the estimated cost of providing the copies exceeds \$100, you may require a deposit or bond from the requestor. Gov't Code § 552.263(a); *see also* Gov't Code §§ 552.261-.273.

cc: Mr. Swiki A. Anderson  
1805 Hondo  
College Station, Texas 77840  
(Open Records Letter No. 98-2869 (1998))

Mr. Steven E. Esmond  
1018 Muirfield Village  
College Station, Texas 77842  
(Open Records Letter No. 98-2869 (1998))